

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery; the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal

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1 principles, and it does not presumptively entitle parties to file confidential information
2 under seal.

3 **2. "CONFIDENTIAL" MATERIAL**

4 "Confidential" material shall include the following documents, electronically
5 stored information (ESI) and tangible things produced or otherwise exchanged:

6 a. King County's personnel and employee records;
7 b. Employee performance evaluations and complaints against KCSO employees;
8 c. King County Office of Civil Rights records;
9 d. King County's Ombudsman's Office records; and
10 e. Any other material enjoying special legal protection from disclosure that is
11 relevant to this case.

13 **3. SCOPE**

14 The protections conferred by this agreement cover not only confidential material
15 (as defined above), but also (1) any information copied or extracted from confidential
16 material; (2) all copies, excerpts, summaries, or compilations of confidential material; and
17 (3) any testimony, conversations, or presentations by parties or their counsel that might
18 reveal confidential material.

19 However, the protections conferred by this agreement do not cover information
20 that is in the public domain or becomes part of the public domain through trial or
21 otherwise.

22 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

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1 4.1 Basic Principles. A receiving party may use confidential material that is
2 disclosed or produced by another party or by a non-party in connection with this case
3 only for prosecuting, defending, or attempting to settle this litigation. Confidential
4 material may be disclosed only to the categories of persons and under the conditions
5 described in this agreement. Confidential material must be stored and maintained by a
6 receiving party at a location and in a secure manner that ensures that access is limited to
7 the persons authorized under this agreement.

8 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
9 ordered by the court or permitted in writing by the designating party, a receiving party
10 may disclose any confidential material only to:

12 (a) the receiving party's counsel of record in this action, as well as
13 employees of counsel to whom it is reasonably necessary to disclose the information for
14 this litigation;

15 (b) the officers, directors, and employees (including in house counsel) of
16 the receiving party to whom disclosure is reasonably necessary for this litigation;

17 (c) experts and consultants to whom disclosure is reasonably necessary
18 for this litigation and who have signed the "Acknowledgment and Agreement to Be
19 Bound" (Exhibit A);

20 (d) the court, court personnel, and court reporters and their staff;

22 (e) copy or imaging services retained by counsel to assist in the
23 duplication of confidential material, provided that counsel for the party retaining the
copy or imaging service instructs the service not to disclose any confidential material to

1 third parties and to immediately return all originals and copies of any confidential
2 material;

3 (f) during their depositions, witnesses in the action to whom disclosure
4 is reasonably necessary and who have signed the "Acknowledgment and Agreement to
5 Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by
6 the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
7 confidential material must be separately bound by the court reporter and may not be
8 disclosed to anyone except as permitted under this agreement;

9 (g) the author or recipient of a document containing the information or
10 a custodian or other person who otherwise possessed or knew the information.

12 4.3 Filing Confidential Material. Before filing confidential material or
13 discussing or referencing such material in court filings, the filing party shall confer with
14 the designating party to determine whether the designating party will remove the
15 confidential designation, whether the document can be redacted, or whether a motion to
16 seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the
17 procedures that must be followed and the standards that will be applied when a party
18 seeks permission from the court to file material under seal.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
21 party or non-party that designates information or items for protection under this
22 agreement must take care to limit any such designation to specific material that qualifies
23 under the appropriate standards. The designating party must designate for protection

1 only those parts of material, documents, items, or oral or written communications that
2 qualify, so that other portions of the material, documents, items, or communications for
3 which protection is not warranted are not swept unjustifiably within the ambit of this
4 agreement.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that
6 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
7 to unnecessarily encumber or delay the case development process or to impose
8 unnecessary expenses and burdens on other parties) expose the designating party to
9 sanctions.

10 If it comes to a designating party's attention that information or items that it
11 designated for protection do not qualify for protection, the designating party must
12 promptly notify all other parties that it is withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this
14 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
15 or ordered, disclosure or discovery material that qualifies for protection under this
16 agreement must be clearly so designated before or when the material is disclosed or
17 produced.

18 (a) Information in documentary form: (e.g., paper or electronic
19 documents and deposition exhibits, but excluding transcripts of depositions or other
20 pretrial or trial proceedings), the designating party must affix the word
21 "CONFIDENTIAL" to each page that contains confidential material. If only a portion or
22 portions of the material on a page qualifies for protection, the producing party also must
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1 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
2 margins).

3 (b) Testimony given in deposition or in other pretrial proceedings: the
4 parties and any participating non-parties must identify on the record, during the
5 deposition or other pretrial proceeding, all protected testimony, without prejudice to
6 their right to so designate other testimony after reviewing the transcript. Any party or
7 non-party may, within fifteen days after receiving the transcript of the deposition or other
8 pretrial proceeding, designate portions of the transcript, or exhibits thereto, as
9 confidential. If a party or non-party desires to protect confidential information at trial,
10 the issue should be addressed during the pre-trial conference.

12 (c) Other tangible items: the producing party must affix in a prominent
13 place on the exterior of the container or containers in which the information or item is
14 stored the word "CONFIDENTIAL." If only a portion or portions of the information or
15 item warrant protection, the producing party, to the extent practicable, shall identify the
16 protected portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
18 to designate qualified information or items does not, standing alone, waive the
19 designating party's right to secure protection under this agreement for such material.
20 Upon timely correction of a designation, the receiving party must make reasonable efforts
21 to ensure that the material is treated in accordance with the provisions of this agreement.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

1 6.1 Timing of Challenges. Any party or non-party may challenge a designation
2 of confidentiality at any time. Unless a prompt challenge to a designating party's
3 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
4 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
5 party does not waive its right to challenge a confidentiality designation by electing not to
6 mount a challenge promptly after the original designation is disclosed.

7 6.2 Meet and Confer. The parties must make every attempt to resolve any
8 dispute regarding confidential designations without court involvement. Any motion
9 regarding confidential designations or for a protective order must include a certification,
10 in the motion or in a declaration or affidavit, that the movant has engaged in a good faith
11 meet and confer conference with other affected parties in an effort to resolve the dispute
12 without court action. The certification must list the date, manner, and participants to the
13 conference. A good faith effort to confer requires a face-to-face meeting or a telephone
14 conference.

16 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
17 intervention, the designating party may file and serve a motion to retain confidentiality
18 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The
19 burden of persuasion in any such motion shall be on the designating party. Frivolous
20 challenges, and those made for an improper purpose (e.g., to harass or impose
21 unnecessary expenses and burdens on other parties) may expose the challenging party to
22 sanctions. All parties shall continue to maintain the material in question as confidential
23 until the court rules on the challenge.

1 7. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
2 **OTHER LITIGATION**

3 If a party is served with a subpoena or a court order issued in other litigation that
4 compels disclosure of any information or items designated in this action as
5 "CONFIDENTIAL," that party must:

6 (a) promptly notify the designating party in writing and include a copy
7 of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or
9 order to issue in the other litigation that some or all of the material covered by the
10 subpoena or order is subject to this agreement. Such notification shall include a copy of
11 this agreement; and

12 (c) cooperate with respect to all reasonable procedures sought to be
13 pursued by the designating party whose confidential material may be affected.

14 8. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

15 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
16 confidential material to any person or in any circumstance not authorized under this
17 agreement, the receiving party must immediately (a) notify in writing the designating
18 party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized
19 copies of the protected material, (c) inform the person or persons to whom unauthorized
20 disclosures were made of all the terms of this agreement, and (d) request that such person
21 or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached
22 hereto as Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of
5 the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
6 provision is not intended to modify whatever procedure may be established in an e-
7 discovery order or agreement that provides for production without prior privilege
8 review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d)
9 as set forth herein.

10 10. NON TERMINATION AND RETURN OF DOCUMENTS

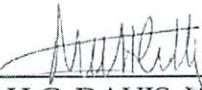
11 Within 60 days after the termination of this action, including all appeals, each
12 receiving party must return all confidential material to the producing party, including all
13 copies, extracts and summaries thereof. Alternatively, the parties may agree upon
14 appropriate methods of destruction.

16 Notwithstanding this provision, counsel are entitled to retain one archival copy of
17 all documents filed with the court, trial, deposition, and hearing transcripts,
18 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
19 consultant and expert work product, even if such materials contain confidential material.

20 The confidentiality obligations imposed by this agreement shall remain in effect
21 until a designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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4 DATED: 3/8/2019


5 NOAH C. DAVIS, WSBA #30939
6 MATTHEW Z. CROTTY, WSBA #39284
7 Attorneys for Plaintiff

8 DATED: 3/19/19


9 ALLYSON K. ZERBA, WSBA #29369
10 Attorneys for Defendants

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production
3 of any documents in this proceeding shall not, for the purposes of this proceeding or any
4 other proceeding in any other court, constitute a waiver by the producing party of any
5 privilege applicable to those documents, including the attorney-client privilege, attorney
6 work-product protection, or any other privilege or protection recognized by law.
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9 DATED: March 19, 2019

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13 Marsha J. Pechman
14 United States District Judge
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STIPULATED PROTECTIVE ORDER

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, the undersigned, hereby acknowledge that I have received and read a copy of the Stipulated Protective Order ("Order") entered in *James Triller v. King County, John Urquhart*, United States District Court; Cause No. 18-cv-1647-MJP, that I understand the provisions in the Order; that I agree to be bound by all provisions of the Order; that I submit to the jurisdiction of the Court for the purpose of enforcing the Order; and that I understand that sanctions may be imposed by the Court, including an order of contempt, if I fail to abide by and comply with all the terms, conditions and restrictions imposed by the Order.

Date: _____

Signature: _____

Printed name: _____